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DE RUEHVJ #1068/01 1361432
ZNY CCCCC ZZH
O 161432Z MAY 07
FM AMEMBASSY SARAJEVO
TO RUEHC/SECSTATE WASHDC IMMEDIATE 6205
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE
RUEHTC/AMEMBASSY THE HAGUE 0140
RHEHNSC/NSC WASHDC
RUEAIIA/CIA WASHINGTON DC
RHEFDIA/DIA WASHINGTON DC
RUEKJCS/JCS WASHINGTON DC
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RUFOAOA/USNIC SARAJEVO

C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 001068

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DEPARTMENT FOR EUR (DICARLO), EUR/SCE (STINCHCOMB, HOH),
EUR/ACE (DUNN) S/WCI (WILLIAMSON, LAVINE); NSC FOR BRAUN;

E.O. 12958: DECL: 05/11/2017

TAGS: [PHUM](#) [KAWC](#) [KCRM](#) [KJUS](#) [PGOV](#) [PINR](#) [PREL](#) [BK](#)

SUBJECT: BOSNIA - THE STATE PROSECUTOR AND STATE COURT
POST-ICJ VERDICT

REF: A. SARAJEVO 863
[1](#)B. SARAJEVO 807
[1](#)C. SARAJEVO 677
[1](#)D. SARAJEVO 500
[1](#)E. 06 SARAJEVO 3069

Classified By: DCM Judith B. Cefkin. Reason 1.4 (b) and (d).

[1](#)1. (C) SUMMARY: The February 26 International Court of Justice (ICJ) decision that genocide was committed in and around Srebrenica from July 11, 1995 has placed the issue of war crimes prosecutions near the top of the Bosnian political agenda. The current political environment has highlighted critical challenges confronting the State Prosecutor's Office and State Court, particularly the Court's War Crimes Chamber (WCC) and the Prosecutor's Special Department for War Crimes (SDWC), which are key to both our state-building and war crimes strategies for Bosnia. Their creation was a major U.S. policy success, but the dangers posed by Bosnian political leaders' propensity to exploit war crimes issues for political purposes remains acute. A burgeoning war crimes caseload, including the transfer by the International Criminal Tribunal for the former Yugoslavia (ICTY) of an increasing number of cases to Bosnia, the absence of a clear strategy for managing war crimes cases, the lack of effective public outreach at both the Prosecutor's Office and the Court, and weak leadership by the State Prosecutor exacerbate these challenges. Active international support for these institutions, which only began hearing cases two years ago, is likely to remain critical to their development and to Bosnia's future. END SUMMARY.

Political Winds Buffet State Judicial Institutions

[1](#)2. (C) Over the last year Bosnian politics have becoming increasingly fractious as political leaders have chosen to build their support based on appeals to nationalism and frame most issues in ethnic terms. This was a principle reason the Peace Implementation Council (PIC) decided in February it was necessary to extend OHR's mandate for an additional year. The ICJ's February 26 verdict that genocide took place in Srebrenica in July 1995 further heightened political tensions. It also focused attention on unresolved war crimes issues, such as the so-called Srebrenica list and the 1992 massacre of Bosniaks in Bratunac (Ref. A and B), and on efforts by the State Prosecutor's Office and the State Court to ensure war criminals face justice.

¶3. (C) Bosniak political leaders responded by manipulating war crimes cases in a manner that undermines public confidence in these new state-level judicial institutions. (Note: The problem predates the ICJ verdict, and all ethnic groups are guilty of it, but it has intensified since February 26. End Note.) Nationalist politicians have argued "nothing is being done" to punish war criminals. They ignore the State Prosecutor's and State Court's successes, and exploit the fact that the public does not understand that the domestic institutions capable of delivering justice were only established 10 years after Dayton. Frequent public turf battles between State Prosecutor Jurcevic, State Court President Kreso and High Judicial and Prosecutorial Council (HJPC) Chair Peric do nothing to increase public confidence that impartial justice is being done.

Workload Issues Increase Political Vulnerabilities

¶4. (C) In 2003, when international donors agreed to provide technical and financial assistance to the State Prosecutor and the State Court, the aim was to develop Bosnia's capacity to adjudicate cases transferred from the International Criminal Tribunal for the former Yugoslavia (ICTY) in those instances where ICTY had issued an indictment, but had not yet begun trials (so-called 11bis cases). There were nine 11bis cases in 2003, and it was expected that the State Prosecutor/State Court would have fully adjudicated them by the end of 2009. In fact, because of construction delays, the first war crimes trials did not begin until 2005, almost a full year behind schedule. The ICTY's work has also proceeded more slowly than assumed, and with its close-out

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looming, it now appears likely that the State Prosecutor/State Court will inherit many more 11bis cases than the nine identified in 2003.

¶5. (C) In addition, the "Rules of the Road" caseload is much larger than anticipated (i.e., those cases investigated by ICTY, but not indicted before the ICTY Completion Strategy cutoff date of 2004). New domestic criminal complaints alleging war crimes and crimes against humanity are also burgeoning. According to the State Prosecutor's Registry, in October 2006, the SDWC had 126 open investigations (involving 334 suspects), 6 confirmed indictments and 5 trials/appeals underway. Just six months later, in April 2007, there were 205 open investigations (involving 655 suspects), 21 confirmed indictments and 24 trials/appeals underway. As a result, resources are stretched thin and the SDWC and WCC are ill-equipped to handle the rapidly expanding case load.

¶6. (C) The donor community had planned a gradual reduction of secondments and financial contributions, with the final international prosecutors and judges departing in 2008 and 2009, respectively. State war crimes prosecutors are increasingly concerned that political pressure rather than more objective criteria will guide decisions about the selection and pace of investigations/prosecutions as the international presence diminishes. The international presence has so far been crucial to withstanding this kind of pressure.

Need for a War Crimes Strategy and Outreach

¶7. (C) A national war crimes prosecution strategy that provides a workable set of criteria for case selection would enable the State Prosecutor's Office to better focus its limited resources. It would also provide the Bosnian public and politicians with a framework for assessing the State Prosecutor's work and begin the process of addressing expectations about what the State Prosecutor can and cannot accomplish. Perhaps most importantly, it would insulate the war crimes investigations and prosecutions from political

pressure. If political leaders argued "more needs to be done," a war crimes strategy would provide an intellectual framework for a policy-oriented discussion about whether/what additional resources are required to accomplish this goal (Note: We have urged Bosniak political leaders demanding a more robust international effort on war crimes to put their money where their mouth is and use some of the funds they set aside for Srebrenica to support the State Prosecutor's Office and Court. End Note.)

¶8. (C) The State Prosecutor and State Court also each need to improve their public outreach efforts. Most lay people have little or no understanding of the legal requirements necessary to turn an accusation into an effective investigation and successful prosecution (e.g., forensic and documentary evidence, eye witness testimony) (Ref. C). They simply "know" that this or that person from their village is guilty and expect "justice" to be done. Thus, as the outcry over the State Prosecutor's seeming inaction on the Srebrenica list demonstrated, public expectations are unreasonably high, and disappointment with the State Prosecutor's Office and State Court's performances unnecessarily severe. Unfortunately, neither the Prosecutor's Office nor the Court have effective outreach mechanisms for setting the record straight.

The State Prosecutor and the Vision Thing

¶9. (C) Unfortunately, it is becoming increasingly apparent that Chief Prosecutor Jurcevic, appointed in 2003 for a six-year term, has neither the vision nor the temperament necessary to grow the war crimes prosecutors' section without prodding. In fact, his actions undercut his own prosecutors.

Faced with public complaints, donor expectations and a workload he never expected, Jurcevic has tried to ignore problems or, failing that, deflect blame elsewhere. He has often crumbled to political pressure -- reshuffling case priorities based upon which public figure or victims group is badgering him the most at that time.

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¶10. (C) Jurcevic has so far resisted embracing and implementing the draft National Strategy his war crimes prosecutors have prepared. Most recently, he asked the Minister of Justice to create an unnecessarily bureaucratic inter-agency "working group" to develop another strategy for submission to the Council of Ministers. This unnecessary step would likely delay implementation for months. Furthermore, requiring Council of Ministers approval would give politicians another means of undermining the Bosnian judiciary. The American and British prosecutors who are pushing the in-house National Strategy say that Jurcevic can be persuaded to make internal improvements in the short-term, but that is unlikely to happen without forceful and consistent pressure from international donors.

Comment

¶11. (C) Without adequately addressing its wartime past, Bosnia's future will remain uncertain. Given their burgeoning workload and the current political environment, it is easy to imagine an scenario where the State Prosecutor's Office and State Court are overwhelmed from the outside and undercut by the Chief Prosecutor from the inside. International political, technical and financial support has been critical to the two institutions' successes to date. The presence of international prosecutors and judges within the institutions also lends credibility to the State Prosecutor and State Court by somewhat insulating them from charges that their decisions are driven by ethnic considerations. The reaction to the ICJ verdict only underscores their importance. The verdict also highlighted the need to reexamine some of the assumptions the

international community made about the Prosecutor's Office and the Court in 2003 when they were created and the need for measures, such as a war crimes strategy, to ensure their long-term health.

MCELHANEY